

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BRAD WARRINGTON,

Plaintiff,

v.

Case No.: 2:22-cv-77-JES-KCD

RAKESH PATEL and ROCKY
PATEL PREMIUM CIGARS, INC.,

Defendants.

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ORDER

Before the Court is Defendants' Motion for Reconsideration, which is fully briefed. (Docs. 113, 115, 118.)¹ The request for reconsideration concerns the undersigned's prior order denying Defendants' motion to amend to add seven new affirmative defenses and a counterclaim. (Doc. 105.) Defendants argue that reconsideration is needed "to correct clear error and prevent manifest injustice." (Doc. 113 at 2.) Specifically, Defendants offer argument and an affidavit to show that there was no undue delay in seeking leave to amend.

The decision to grant a motion for reconsideration of a non-final order is within the sound discretion of the court. *Region 8 Forest Serv. Timber*

¹ Unless otherwise indicated, all internal quotation marks, citations, and alterations have been omitted in this and later citations.

Purchasers Council v. Alcock, 993 F.2d 800, 806 (11th Cir. 1993). Courts have recognized three grounds to justify reconsideration: (1) an intervening change in the controlling law; (2) the availability of new evidence; (3) the need to correct clear error or prevent manifest injustice. *See Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994).

Considering the arguments presented, Defendants have sufficiently explained why they could not amend their answer earlier. Further, given the posture of the case, allowing Defendants to amend at this juncture would not prejudice Plaintiff. Finally, the validity of Defendants' proposed counterclaim is better addressed under Fed. R. Civ. P. 12 given the arguments presented.

Accordingly, Defendants' Motion for Reconsideration (Doc. 113) is **GRANTED**, and on reconsideration, Defendants' Motion for Leave to Amend Affirmative Defenses and Add Counterclaim (Doc. 96) is **GRANTED**. Defendants must file a second amended answer to add the affirmative defenses and counterclaim by **August 25, 2023**.

ORDERED in Fort Myers, Florida this August 15, 2023.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record